IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2049 OF 2002

Shree Anantnathji Maharaj Jain Temple and its Sadharan Fund

.. Petitioner

vs

Shri Jagat Bahadur Singh & anr .. Respondents

..

Mr J.P.Cama i/b RMG Law Associates for Petitioner

None for Respondents

CORAM: D.G.KARNIK, J

DATE: 28th June, 2005

P.C.

1. By this petition the petitioner challenges the judgment and order dated 31st May 2002 passed by the 7th Labour Court, Mumbai allowing respondent's application bearing IDA No.173 of 2004 made under section 33 C (2) of the Industrial Disputes Act

(for short the Act).

2. The Respondent no.1 joined the services of the petitioner temple on 1st July 1963. Initially the respondent no. 1 worked as a watchman and a Rent Collector till the year 1977, and was then promoted as an office clerk and worked as such till the year 1993. Services of the respondent no. 1 were terminated in the year 1993. The ternmination was challenged by the respondent no. 1 by filing a complaint, bearing ULP No.333 of 1993, in the Labour Court under the provisions of the Maharashtra Recognition of Trade Union and Unfair Labour Practices Act (for short MRTU and PULP Act). By an order dated 28th October 2004 the Labour Court held that action of the petitioner in terminating the service of the respondent no. 1 amounted to an unfair labour practice ; however instead of directing reinstatement the Labour Court directed the petitioner to pay to the respondent no. 1 a sum of Rs.1,25,000/- as compensation in lieu of the reinstatement, back wages and legal dues. None of the parties challenged the said order which has become final. In pursuance of the said order the petitioner deposited in the Labour

Court a sum of Rs.1,25,000/- in three instalments.

3. In May 1994 the respondent no. 1 filed an application bearing IDA NO.1783 of 1994 purpurtingly under section 33 C (2) of the Act. In the application the respondent no.1 alleged that since June 1975 he had been continuously working over time for four hours every day and was also working on Sundays and other holidays. He further alleged that he was not paid for the over time work. He further alleged that he was entitled to one month's privilege leave, one month's sick leave and 6 days of casual leave, and as he had not availed the leave he was entitled to wages in lieu of the privilege leave, sick leave and the casual leave. The respondent no. 1 therefore claimed wages for the over time as also in lieu of the privilege leave, sick leave and the casual leave not availed by him. By filing the written statement the petitioner denied the claim of the respondent no.1 in toto. Firstly, it contended that the petitioner was a temple and was not an industry and therefore the application under section 33 C (2) was not maintainable. Without prejudice to that contention it traversed the

allegations of the petitioner that he was required to work over time and was not paid wages for the over time. It denied that the respondent no.1 was not paid wages for the over time and stated that whenver the respondent no. 1 was required to work over time he was paid for the extra work done. It further denied the claim for the wages in lieu of privilege leave and sick leave. It further contended that in the complaint under the MRTU and PULP Act the petitioner was directed to pay to the respondent no. 1 a sum of Rs.1,25,000/- as compensation, in lieu of the reinstatement, back wages and all other legal dues. The amount of Rs.1,25,000/- was lump sum compensation in lieu of all the dues payable to the respondent no. 1. and he was not entitled to any additional payment.

4. Before the Labour Court the respondent no. 1 examined himself and was cross examined. The petitioner examined one of its trustees and also the Assistant Secretary. After considering the evidence the Labour Court by its judgment and order dated 2nd May 2002 allowed the application and directed the petitioner to pay to the respondent no. 1 a sum of Rs.1,95,652.44 towards the over

time and weekly off. That judgment is impugned in this petition.

5. Learned counsel for the petitioner submits that the application under section 33 C (2) was not maintainable in as much as the dues claimed by the respondent no. 1 were not admitted. He submits that the application under section 33 C (2) is in the nature of the execution proceedings wherein the Labour Court calculates the amount of money due to a workman or if the workmen is entitled to any benefit which is being capable computed in terms of money the Labour Court computes the benefits in terms of money and orders payment. The calculation or computation follows an existing right to money or benefit which is previously adjudged. The Labour Court cannot embank on an enquiry as to whether the workman has a right to the claim, which is not admitted or previously adjudicated. In the present case it was denied that the respondent no.1. had done any over time or that he worked on a weekly off. There was no adjudication in any earlier proceedings whether the respondent no.1 had worked over time and was not paid any wages for such over time work. It was also not admitted that

the respondent no. 1 was required to work on sundays. These contentions were not adjudicated previously. Since the allegations of over time work and weekly off were denied they required adjudication and therefore the petitioner was not entitled to file an application under section 33 C (2) which is in the nature of an execution. Learned counsel for the petitioner relies upon the decision of the Apex court in Central Inland Water Transport Corporation vs The Workmen reported in AIR 1974 SC 1604. In paras 12 and 13 of its decision the Supreme Court has laid down that an application under section 33 C (2) is in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to the workman from his employer or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. The calculation or computation follows upon an existing right to the money or benefit in view of its being previously adjudged or otherwise duly provided for. If a claim for relief made by the workman against the employer involves an investigation which requires determination of :

(i) workman’s right to relief ; or

(ii) the corresponding liability of the employer including whether the employer is at all liable or not ?

Then the application under section 33 C (2) is not maintainable.

6. The Labour Court would not have jurisdiction to determine under section 33 C (2) of the Act when the very right of a workman to a receive the money is disputed. When Labour Court comes to the conclusion that such a denial is not illusory but would require adjudication then such adjudication cannot be made under section 33 C (2) of the Act. In the present case the liability was denied. The denial was not illusory but of substance. Learned counsel for the petitioner invited my attention to the statements made by the respondent no. 1 in his cross examination. Therein he has specifically admitted that except for Gujrathi typing work he did not have any additional work and that typing

work was not done every day. He has further admitted that he was receiving charges from the petitioner for that typing work. He has also admitted that he had no proof that he was required to discharge extra duty on Sundays. Thus the very claim of the respondent that he worked over time was not only disputed but there are admissions of the respondent that whenever he did extra work he was paid the charges. In the circumstances, whether the respondent worked over time and was entitled to the money at all was a seriously disputed fact which required adjudication and that could not be done in an application under section 33 C (2) of the Act.

7. Learned counsel for the petitioner further submits that in any event the Labour Court ought not to have entertained the application because the respondent was guilty of latches and had approached the court for the first time in the year 1994 after his services were terminated, claiming wages for the overtime done since 1975. In the past, the respondent had not made any grievance that he was required to work over time and was not paid wages for the overtime work. Obviously the petitioner

was not expected to preserve the records for a period of 19 years since 1975. As the application was made in the year 1994 claiming overtime for the period from 1975, serious prejudice would be caused to the employer if an employee is allowed to make the claim after several years when the records are not available. Learned counsel for the petitioner refers to and relies upon a decision of this court in S.A.Shaikh vs Union of India reported in 2002 (3) CLR 132. Therein dealing with the contention of the workmen that section 33 C (2) of the Act does not prescribe any period of limitation and so it could be made at any time, this Court held that merely because there is no specific prescription of limitation the court cannot loose sight of the reality that the employer who was not be expected to preserve the records for decades would be seriously prejudiced if the claim was entertained after lapse of any length of time. The Court further held that it was absurd to imagine that application under section 33 C (2) of the Act could be filed at any time. The Court held that allowing the application to be made after lapse of several years (26 years in that case) would amount to abuse of the process of law. There is no much difference

in the facts of that case and this case. Therein the claim was made after 26 years and in the present application is made after 19 years. The respondent which is a temple and probably governed by the provisions of the Bombay Public Trust Act is not required to maintain records for 19 years. Therefore, it would not be possible for it to produce the records and confront the respondent with the receipts of money paid to him for the extra work done by him occasionally. Yet the petitioner managed to produce some receipts. The respondent no. 1 admitted those receipts. He did not offer any explanation as to why he did not claim wages for the alleged overtime for 19 years. It was only after his service was terminated that he made a complaint for the first time. It is also worthwhile to note that in the application made by him for the wrongfull termination under the MRTU and PULP Act an order of payment of compensation of Rs.1,25,000/- was passed in lieu of reinstatement, back wages and legal dues. If overtime wages were a part of the legal dues then he was awarded Rs.1,25,000/- inclusive of those legal dues. He has accepted the said sum. In the circumstances, it would be abuse of the process of law to permit

the petitioner to file the petition under section 33 C (2) after a lapse of 19 years.

8. In view of these findings it is not necessary to decide whether the petitioner is an industry and in view of these findings, the learned counsel for the petitioner also does not press the contention.

9. For the above reasons, the petition succeeds. The impugned order is quashed and set aside and Rule is made absolute in terms of prayer clause (a).

D.G.KARNIK, J